

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this amendment, claims 5-7, 16, 21-38 will be pending in the present application. Claims 34 and 35 have been withdrawn from consideration. Claims 1-4, 8-15, and 17-20 have been cancelled.

I. Section 112 Rejections.

Claim 6 has been amended to overcome the rejection regarding antecedence for “said latch.” Claim 16 has been amended to overcome the rejection regarding antecedence for “each recess.” Claim 25 has been amended to overcome the rejection regarding antecedence for “each recess.” Claim 30 has been amended to overcome the rejection regarding antecedence for “said upper surface” in claim 33. Reconsideration of these rejections is requested.

II. Section 102 and Section 103 Rejections.

A. The rejection of claims 5, 24, 36-37 under 35 U.S.C. § 102(b) under Dooley et al (Dooley).

The Examiner concluded that Dooley anticipates the Applicant’s invention. However, the invention recited in claim 5 recites that the insulating layer includes “an elongate partition extending between the insulating bottom wall and the lid. Similarly, claim 24 recites that the insulating layer has “an elongate partition . . . extending proximate the lid such that each compartment is substantially thermally isolated from one another. . . .” Dooley does not have an elongate partition.

Dooley was configured to provide a cooler with a sloped section so that beverage cans would roll out when front panel 34 is opened. Dooley permits ice to be placed on either side and over the beverage cans thus creating a single temperature zone rather than two “substantially thermally isolated” compartments which permit different relative temperatures to be maintained in each compartment as recited in claims 5 and 24. There is simply no teaching in this reference,

or any of the other art of record, that it would be desirable to create separate substantially thermally isolated zones that permit different relative temperatures to be maintained in each compartment.

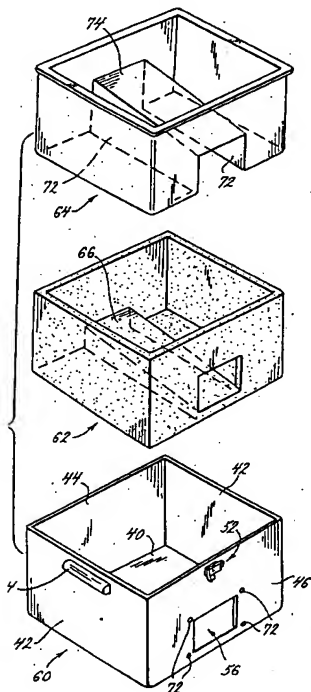


Fig. 3. Dooley Device

Secondly, claims 5 and 24 both recite that the insulating container includes a liner. As noted in the present application, the Applicant invented a removable liner that could be secured within the insulating container. The liner is separate and removable from the insulating layer. This allows the liner to be removed from the insulating layer when it is desired to clean the interior of the container. Dooley does not even recognize the problem identified by the Applicant, and certainly does not suggest a solution.

Third, with respect to claim 24, the liner of the Applicant's invention includes "a plurality of coupling cavities." The device disclosed in Dooley simply does not include a single coupling cavity let alone a plurality of coupling cavities formed in a liner. Dooley merely discloses a sloped section down which beverage cans can slide when panel 24 is opened. The Examiner essentially ignores this limitation of claim 24.

As highlighted above, Dooley is defective in several respects. Dooley does not disclose the Applicant's elongate partition. Dooley doesn't disclose a liner. Dooley does not disclose

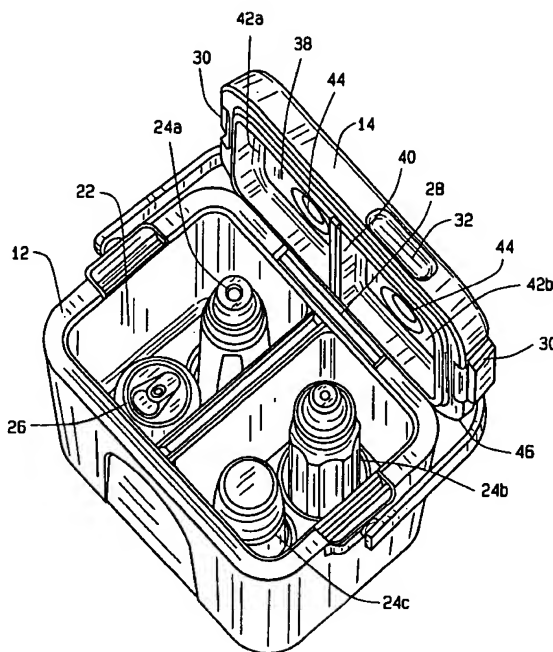


Fig. 2. Applicant's Invention.

coupling cavities. In view of the forgoing, independent claims 5 and 24 as well as dependent claims 36-37 are deemed allowable.

B. the rejection of claims 5, 24, 36-37 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook.

The Applicant asserts that the deficiencies highlighted above with respect to Dooley in Section A are not supplemented by Shook. Shook does not disclose an elongate partition; Shook does not disclose a liner; Shook does not disclose a liner having coupling cavities. Accordingly, the Applicant's remarks above in Section A with respect to Dooley are hereby incorporated by reference in this section.

As noted above, the invention recited in claim 5 recites that the insulating layer includes “an elongate partition extending between the insulating bottom wall and the lid.” Similarly, claim 24 recites that the insulating layer has “an elongate partition . . . extending proximate the lid such that each compartment is substantially thermally isolated from one another. . . .” Dooley does not recognize the desirability of having an elongate partition which extends proximate the lid. To supplement this deficiency, the Examiner contends that Shook discloses an elongate partition which extends to an inner lid.

The Applicant respectfully disagrees with the Examiner's characterization of Shook and the purported obviousness of combining Dooley and Shook as suggested by the Examiner. It would not be obvious to modify a reference in a manner that destroys the device for its intended purpose. M.P.E.P. § 2144.05, citing, *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Upon careful review, Shook doesn't disclose an elongate partition. Shook teaches cavities formed in a sheet of insulative material. These cavities act to “seat against food containers in the cavities and compressibly retain the food containers in the cavities.” (Col. 4, ll. 4-6). The cavities recited in Shook are not analogous to the compartments recited in claims 5 and 24. If anything, the cavities seem more analogous to the scalloped portions 102 formed in the insulated layer 50 of the Applicant's invention. These cavities are repeatedly described as being of such a size and shape to mattingly receive the beverage and food containers in order to retain these items snugly within their cavities (Col. 4, ll. 30-35). This configuration does not provide space for ice packs or heat packs and thus can not create different relative temperature

zones between the two compartments as recited in claims 5 and 24. Essentially, this element of Shook is the bottom portion of the Applicant's invention absent the upstanding walls and elongate partition which define the compartments.

Of course, the cavities could be made larger to accept an ice pack or heat pack; however, doing so would result in a device that is no longer capable of holding the items in a matting configuration. For a device which may be placed flat as shown in Fig. 1 or carried by the handle in a complete different orientation, it would not be obvious to enlarge these cavities since doing so would permit the items to slip and slide around potentially resulting in damage to the items or the case. Perhaps, Shook allows for objects to be securely stored, but it doesn't contemplate how one can also heat or cool these items since the cavities are shaped to mattingly receive their objects. The Applicant overcame this problem by providing an insulating container with an elongate partition which can separate the device into a cold side and a warm side.

In addition, Shook does not disclose a removable liner which can be easily removed as described in the Applicant's invention. Shook merely discloses a removable foam insert which can be fitted in a carrying case. Neither Dooley nor Shook teaches a separate liner. At best, the removable foam insert could be construed as an insulating layer which alone does not meet the limitations of the independent claims and clearly does not render the Applicant's invention obvious.

To modify Dooley, as suggested by the Examiner, would render Dooley unsuitable for its intended purpose. Dooley was configured to provide a cooler with a sloped section so that beverage cans would roll out when front panel 34 is opened. If anything, Dooley teaches away from the invention recited in claim 5, Dooley permits ice to be placed on either side and over the beverage cans thus creating a single temperature zone rather than two "thermally isolated" compartments as recited in claims 5 and 24. There is simply no teaching in this reference, or any of the other art of record, that it would be desirable to create separate substantially thermally isolated zones. Modifying Dooley as suggested by the Examiner would destroy, or at least substantially undermine its ability to effectively cool the beverage cans. Moreover, if the elongate partition is truly extended upward, as suggested by the examiner, the sloped section would no longer function as a sloped section. The beverage cans would no longer roll out. If the Examiner is taken literally and the sloped section is extended upward proximate the lid, there

would be no room for the beverage cans to be placed on the sloped section at all. Essentially, Dooley would need to be completely destroyed and reconfigured. It would not be obvious to modify the references as suggested by the Examiner to arrive at the Applicant's invention as recited in claims 5, and 24, and certainly not the unique configuration recited in claims 36 and 37 to thermally isolate the compartments.

As noted above, Dooley is defective in several respects as an individual reference. Shook does not teach the features which Dooley lacks (e.g., elongate partition, a liner, or a liner having cavities). Yet, even if Shook is somehow construed to teach these missing features, it would not have been obvious to modify Shook and/or Dooley as suggested by the Examiner since doing so destroys the ability of these disclosed devices to function for their intended purpose. In view of the forgoing, independent claims 5 and 24 as well as dependent claims 36-37 are deemed allowable.

C. the rejection of claims 6-7 under 35 U.S.C. § 103(a) as being unpatentable over Dooley in view of Shook and further in view of Lytle and Ragland.

The Applicant contends that this rejection to claims 6 and 7 is deficient for at least the same reasons as highlighted above with respect to claim 5 from which these claims depend. In view of the forgoing, claims 6-7 are deemed allowable.

D. the rejection of claims 16, 21-23, 25 and 27-30 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale and Henry.

The Applicant asserts that the deficiencies highlighted above with respect to Dooley in Section A are not supplemented by Gale or Henry. While the Examiner is correct that Gale teaches a shipping carton for glass bottles, Gale does not teach several of the features which missing in Dooley. As noted above, Dooley does not disclose an elongate partition or a liner. Gale also lacks these features. Accordingly, the Applicant's remarks above in Section A with respect to the elongate partition and the liner are hereby incorporated by reference in this section.

In addition to the deficiencies already highlighted above regarding the lack of an elongate partition and liner, Gale, Dooley, and Henry do not in any way disclose or teach the coupling cavity recited in claim 16 and 30. As recognized by the Examiner, Dooley does not disclose a coupling cavity at all, which necessitated the use of Gale. However, Gale merely discloses an

insert which can engage either the narrow neck of a bottle or the wider base of a bottle. This disclosure does not teach the novel three concentric portions recited with respect to the Applicant's coupling cavity in claims 16 and 30, or the particular dimensions recited in claims 21-23, 25-29. The Applicant has found these three sizes will accommodate the majority of objects that are likely to be used in conjunction with the Applicant's invention. Gale is optimized for use with wine bottles. The particular shapes and sizes disclosed in the present application are not taught or in anyway suggested by Gale.

Henry suffers from the same deficiencies as Gale. Henry is essentially duplicative of the art already of record. Henry discloses a wine bottle carrier configured to hold wine bottles. They are specially designed to hold a single object, which in this case is a wine bottle. As highlighted by the Examiner, what none of the references disclose is a single coupling cavity configured to hold multiple differently sized and shaped objects within a single coupling cavity. To make this distinction clearer, claims 16, 25, and 30 have been amended to state that "each portion of a coupling cavity is concentric."

In view of the forgoing, claims 16, 21-23, 25, and 27-30 are deemed allowable.

E. the rejection of claim 26 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale, Henry, and Potts.

The Applicant contends that this rejection to claim 26 is deficient for at least the same reasons as highlighted above in Section D with respect to claim 25 from which this claim depends. In view of the forgoing, claim 26 is deemed allowable.

F. the rejection of claim 33 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale, Henry, Testa and Torokvei.

Claim 33 is deemed allowable for at least the same reasons recited in this Section D with respect to claim 30, which are hereby incorporated by reference into this section. While the Examiner recognizes that Dooley, Gale and Henry are deficient, the Examiner misinterprets the teachings of Testa and Torokvei. The Examiner has concluded that the recesses of Testa in combination with the domed projections of Torokvei render the present invention obvious. However, this is not correct. Testa, if anything, shows recesses which is the opposite of what is claimed: at least one domed portion on the upper surface of the lid. While Torokvei discloses

domed portions inside the “stacking case” Torokvei does not disclose placing domed portions on the upper surface of the lid. If anything this art teaches away from the Applicant’s invention. Torokvei doesn’t disclose a lid at all. Yet, even if it did, it simply would not be obvious to place a domed portion on the lid since doing so would frustrate the ability of Torokvei’s disclosed stacking cases to stack. It is simply a different invention with different structure configured to solve a different problem. Alone or in combination with the art of record, this reference does not render the present invention as recited in claim 33 obvious.

In view of the forgoing, claim 33 is deemed allowable.

G. the rejection of claims 16, 21-23, 25 and 27-30 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook, Gale, and Henry.

As discussed above, Shook does not supplement the deficiencies of the other references Dooley, Gale, and Henry. The responses above in Sections A, B and D are incorporated herein. In view of the forgoing, independent claims 16 and 30, as well as dependent claims 21-23 25, and 27-30 are deemed allowable.

H. the rejection of claims 31-32 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale, Lytle, Ragland, and Henry.

Claims 31 and 32 are dependent claims based on independent claim 30. As such, Applicant contends that claims 31 and 32 are allowable based upon their dependency upon claim 30 as detailed above in Section D. Accordingly, the Applicant’s remarks above in Section D are hereby incorporated by reference into this section. Lytle discloses a hinged closure used as a simple enclosure for prints, maps, drawings, umbrellas, and the like. Ragland discloses a car seat snack tray. These references also suffer from the same failings as the other references presented by the Examiner. Lytle does not disclose an elongate partition, a liner or a liner with latches. Ragland doesn’t disclose an insulating layer having an elongate partition capable of separating the insulating layer into two compartments. Although Ragland could be construed to include a liner. Ragland does not disclose a liner having coupling cavities as recited in claim 30. In addition, Ragland doesn’t include a latch formed on the liner. Instead, Ragland includes a latch 22 formed on the base 12 (Col. 5, ll. 28-34). Neither Lytle nor Ragland addresses the deficiencies inherent in the Examiner’s other references.

In view of the forgoing, dependent claims 31 and 32 are deemed allowable.

J. the rejection of claims 31-32 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook, Gale, Lytle, Ragland, and Henry.

Claims 31 and 32 are dependent claims based on independent claim 30. As such Applicant contends that claims 31 and 32 are allowable based upon their dependency upon claim 30 as detailed above in Section D. Accordingly, the Applicant's remarks above in Section D are hereby incorporated by reference into this section. Shook discloses a foam insert that can be fitted in a carrying case. Lytle discloses a hinged closure used as a simple enclosure for prints, maps, drawings, umbrellas, and the like. Ragland discloses a car seat snack tray. These references also suffer from the same failings as the other references presented by the Examiner. Shook and Lytle do not disclose an elongate partition, a liner or a liner with latches. Ragland doesn't disclose an insulating layer having an elongate partition capable of separating the insulating layer into two compartments. Although Ragland could be construed to include a liner. Ragland does not disclose a liner having coupling cavities as recited in claim 30. In addition, Ragland doesn't include a latch formed on the liner. Instead, Ragland includes a latch 22 formed on the base 12 (Col. 5, ll. 28-34). Neither Lytle nor Ragland addresses the deficiencies inherent in the Examiner's other references.

In view of the forgoing, dependent claims 31 and 32 are deemed allowable.

L. the rejection of claim 38 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook and Bartholomew.

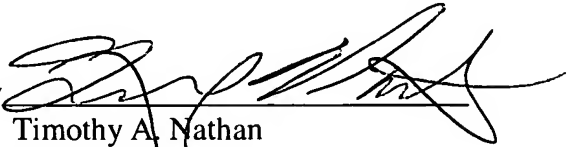
The Applicant asserts that the deficiencies highlighted above with respect to Dooley in Section A are not supplemented by Shook, and Bartholomew. Accordingly, the Applicant's remarks above in Section A with respect to Dooley and Section B with respect to Dooley in light of Shook are hereby incorporated by reference into this section. Applicant contends that dependent claim 38 is allowable for the same reasons as independent claim 30. The rib disclosed by Bartholomew does not address the shortcomings of Dooley and Shook addressed above in Sections A and B of this brief. In view of the forgoing, dependent claim 38 is deemed allowable.

VIII. CONCLUSION

This response is being filed within the three-month statutory response period which expires on June 15, 2010. No additional claim fees are believed to be required as a result of the above amendments to the claims.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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